

## SAVE SAN FRANCISCO BAY ASSOCIATION

1600 BROADWAY, SUITE 300  
OAKLAND, CA 94612  
(510) 452-9261  
FAX: (510) 452-9266  
E-MAIL: CKOEHLER@ECONET.ORG  
HOME OFFICE: (415) 626-6255  
HOME FAX: (415) 626-1029

May 21, 1999

Hon. Jim Costa, Chair  
Agriculture and Water Committee  
State Capitol, Room 405  
Sacramento, CA 95814

Hon. Mike Machado, Chair  
Water, Parks and Wildlife Committee  
State Capitol, Room 5136  
Sacramento, CA 95814

RE: SB 530 and AB564

Dear Chairman Costa and Chairman Machado:

Thank you for your recent telephone call seeking Save The Bay's comments on the proposed water bond measure. I have reviewed in particular Water Supply, Reliability and Infrastructure Chapter, Article 3, the Bay-Delta Multipurpose Water Management Program. Our comments and recommendations on this Article are below.

### **1. Delete this provision from the bill.**

As I have discussed with you and your staff, it is our view that the best approach is to delete this provision from the water bond for three reasons:

First, it is premature. CALFED is about to release a draft Environmental Impact Statement/Report ("EIS/R") and is not expected to go final for another year at least. Considerable controversy exists regarding the proposed "Stage 1 Actions". Additional controversy surrounds the way in which such actions will be financed. Save The Bay, and other EWC organizations, believe that a "CALFED" water bond measure is inappropriate unless and until there is a comprehensive set of finance and repayment rules for CALFED as a whole.

Second, the provision could violate the CALFED parity principle. As you know, Proposition 204 was an internally "balanced" measure; it provided about \$500 million for water user benefits in the areas of increased water supply and reliability, compliance with drinking water quality requirements and levees. It also provided about \$110 million for ecosystem and parks purposes and \$390 million held in an escrow account for long-term CALFED restoration funding. By contrast, the current proposal would provide funding for a relatively narrow set of proposed CALFED Stage 1 actions. While many other provisions of the bond measure are important and laudable, the bill provides relatively little support for ecosystem restoration. In our

view the best way to assure that CALFED moves forward on an equitable basis, including full implementation of the "beneficiary pays" principle, is to consider financing for the CALFED Program as a whole in separate legislation.

Third, we are concerned that the problems in the Bay-Delta Article cannot be remedied to the satisfaction of all parties. As discussed in connection with the 1998 effort, water bond legislation is not the appropriate forum for addressing CALFED program policy disputes.

For all of these reasons, Save The Bay recommends against inclusion of the Bay-Delta Multipurpose Water Management Program in the water bond legislation.

## **2. Modify the language of the Bay-Delta provision.**

In the event that the Bay-Delta provision is retained in the bills, Save The Bay recommends the modifying the language as currently drafted. The recommendations below are provided in the order of the current draft, not in order of their importance to our organization.

79190 (a): "CALFED Bay-Delta Program" should use the same definition as Prop 204:

"means the undertaking by CALFED to develop, by means of the programmatic EIS/EIR, a preferred alternative of programs, actions, projects, and related activities which will provide solutions to identified problem areas within the bay-delta ecosystem."

79190(d)(2)(B): "Eligible Project" With the exception of sub-section 79190(d)(2)(B)(v), this Section is too broad and vague. For example, subsection (iv) would fund construction of any barriers in the south delta "to improve water level for local diversions". We are not aware of any consensus on this point yet in CALFED. Moreover, we are concerned that the bill does not contain a commitment to the beneficiary pays principle so critical to CALFED's success. We recommend the following specific changes in this section:

79190(d)(2)(B)(iii): "Implements paragraph (1) of Section C of Chapter IV of the State Water Resources Control Board's 1995 Water Quality Control Plan; provided that such implementation, and any actions taken, occur with the participation and concurrence of the California Department of Fish and Game and, one of either, the U.S. Fish and Wildlife Service or the National Marine Fisheries Service; and provided further that actions taken pursuant to this subparagraph do not conflict with the federal government's implementation of fish, wildlife and habitat restoration measures pursuant to the Central Valley Project Improvement Act. Actions funded under this subparagraph should be intended to reduce losses of all life stages of fish to unscreened diversions in the San Joaquin River and delta and include fish screens and fish passage improvements."

79190(d)(2)(B)(iv): In light of continuing controversy regarding the water quality impacts associated with an Old River barrier, we recommend deleting this provision from the bill.

Alternatively, we provide the following language for your consideration:

“Addresses the need for a permanent barrier at the head of Old River to improve fish migration, provided that such actions are taken with the participation and concurrence of the California Department of Fish and Game and, one of either, the U.S. Fish and Wildlife Service or the National Marine Fisheries Service; and provided further that actions taken pursuant to this subparagraph do not conflict with the federal government’s implementation of fish, wildlife and habitat restoration measures pursuant to the Central Valley Project Improvement Act.”

Add a new sub-paragraph 79190(d)(2)(C): “The project is subject to a cost-sharing agreement such that the beneficiaries of the project must provide an equitable portion of the cost of the project, but in no case less than 50%.”

79192: Findings and declarations. This section should be deleted since it largely repeats findings that are already in law under Proposition 204. To the extent that subparagraph (b) amends the Proposition 204 findings, we do not concur. In particular, the statement that the “State should participate in the funding of eligible projects to improve conditions in the bay-delta ecosystem” is inappropriate because “eligible projects” under the Bay-Delta Article are not necessarily directed primarily toward improving the ecosystem. Thus, the rationale for providing state funding in Proposition 204 is not applicable to the current proposal.

79196: This afternoon your staff provided me with a copy of Article 3 containing handwritten revisions that would shift responsibility from the Resources Secretary to DWR. We disagree with this (proposed) modification and recommend that responsibility for implementation remain with the Resources Agency which oversees DWR.

The modifications would also eliminate language requiring funding under this Article to be spent in accordance with CALFED procedures. The CALFED process calls for clear technical and scientific justification for spending, as well as public review and oversight. We disagree with the modifications to the extent that they would exclude actions under Article 3 from this process and delegate full discretion for this aspect of CALFED implementation to DWR. If funding under this bond measure is intended to implement the CALFED program, such expenditures must be subject to the same review and process as other program elements. We recommend that this section be retained and that the new modifications be deleted.

79199(d): lines 21-22 should be revised to provide for “water supply reliability” instead of “water supply” to be consistent with CALFED’s program objectives.

79199: Add a new subsection consistent with the procedure set forth in Proposition 204:

(f) “Specific project and program decisions involving the expenditure of funds in the account shall be made in accordance with the procedures adopted by the CALFED Policy

Group for scientific, technical feasibility and public review of all CALFED program expenditures.”

79202: We concur generally with the “water sharing” concept of this provision. We recommend the following modifications to the current draft:

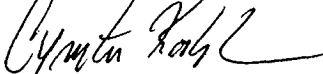
Add at the beginning of 79202(a): “It is neither the purpose or intent of this Article to fund projects that develop water supply. However, in the event that water is incidentally developed by any project funded under this article, [go to current draft language].”

Substitute for current subsection 79202(b): “For purposes of this Section, the term ‘equitable’ means proportionate to the funding that has been provided for the project at issue. Any water incidentally developed in connection with an ‘eligible project’ under this Article for which funding has been provided in whole or part under this Article, or any other form of state or federal financing, will be allocated to the natural resources of the Bay-Delta estuary in an amount proportionate to the state or federal funding provided for such project, with such rights held in trust by the entity responsible for implementation of the long-term CALFED Ecosystem Restoration Program Plan, or the California Department of Fish and Game as trustee until the long-term entity has been designated by the CALFED Policy Group or created by legislation. Any water incidentally developed in connection with an ‘eligible project’ under this Article for which funding has been provided in part by project beneficiaries, will be allocated to such beneficiaries in an amount proportionate to the funding provided for such project by such beneficiaries. Nothing in this Article shall be construed to limit or otherwise affect in anyway the NEPA or CEQA mitigation obligations of any person or entity in connection with the development or construction of projects funded under this Article.

Retain subsections c and d as currently drafted, but consolidate subsections (d)(2) and (d)(4) which are redundant.

Thank you for your consideration of our views. Save The Bay looks forward to working with you and your staffs on this important measure.

Sincerely,



Cynthia Koehler  
Legal Director

cc: JoEllen McChesney  
Brent Walthal